

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF TOLL AND ACCESS)	
CHARGE PRICING AND TOLL SETTLEMENT)	
AGREEMENTS FOR TELEPHONE UTILITIES)	CASE NO. 8838
PURSUANT TO CHANGES TO BE EFFECTIVE)	PHASE III
JANUARY 1, 1984)	

O R D E R

INTRODUCTION

On January 22, 1987, the Commission issued an Order instituting a 55 percent discount for Feature Group A access. On February 11, 1987, US Sprint Communications Company ("Sprint") filed a petition for rehearing and/or clarification of the Commission's Order. Sprint requested that the Commission clarify that the ULAS discount be equally applicable to ULAS interLATA channels in proportional relation to Feature Group B access as well as Feature Group A. The Commission granted Sprint's petition for clarification.

On March 2, 1987, a letter was filed by South Central Bell Telephone Company ("SCB") requesting, in its capacity as Pool Administrator, the Commission's directive concerning the implementation of the discount. The Commission issued an Order on May 7, 1987, specifying the calculations to be used in implementing the previously ordered discount. In addition, this Order required the interLATA carriers to provide premium and nonpremium intra-state switched access minutes in their ULAS reports.

On June 17, 1987, SCB filed ULAS tariff revisions which comply with Commission Orders concerning the nonpremium access discount with a proposed effective date of October 1, 1987. MCI Telecommunications Corporation ("MCI") filed a motion on July 7, 1987, to amend the proposed effective date for the ULAS discount for nonpremium access. MCI requested that the effective date be January 22, 1987, which is the date the Commission issued the Order allowing the nonpremium access discount. Sprint filed comments on July 14, 1987 supporting MCI on the issue of the January 22 effective date.

On July 17, 1987, AT&T Communications of the South Central States, Inc., ("AT&T") responded to MCI's motion by supporting SCB's proposed effective date. AT&T argued that an effective date prior to October 1, 1987, would constitute retroactive rate-making.

On July 20, 1987, SCB filed its response to MCI's motion. In its response, SCB provided explanations for its choice of October 1 as the proposed effective date of the tariff. However, SCB did indicate that it can, with the assistance of the Commission and the carriers, compute revised ULAS bills reflecting the discounts at any effective date the Commission believes is appropriate.

DISCUSSION

The Commission, being advised, is of the opinion that the effective date of the nonpremium discount should be January 22, 1987, the date that the discount was first ordered by the Commission. The purpose of the January 22 Order was to apply the nonpremium discount to the carrier's ULAS payments, where equal

access is not available, in the same manner that it was being applied to the carrier common line portion of access charges.

As the January 22 Order makes clear, the Commission's decision to implement a discount for nonpremium access was based on evidence in the record, contrary to AT&T's allegation in its memorandum in opposition to Sprint's petition for clarification, filed February 26, 1987.

There was considerable discussion during the proceeding concerning whether the 55 percent discount should be given for inferior access. AT&T's witness, L.G. Sather, reiterated AT&T's opposition to any discount granted to Allnet, MCI, and US Sprint. However, AT&T did indicate that the application of discounts to ULAS payments was preferable to the ULAS charge based on BHMC. Allnet, MCI, and US Sprint have indicated in a number of instances their position that the 55 percent discount should apply to all charges until equal access is generally available throughout the state. (January 22 Order, p. 4.)

The rationale for the decision to implement a discount was also stated.

The Commission is no longer convinced that the conversion to equal access will mirror the increases in the ULAS revenue requirements. Further, the Commission is still convinced that concerns with the quality differences between feature groups "A" and "C" justify the 55 percent discount granted in its Order of 1984. (January 22 Order, p. 5.)

As Sprint emphasized in its request for clarification, the Commission, in its November 20, 1984, Order found that Feature Group A and Feature Group B access are inferior grades of service and therefore, a discount should be provided for such nonpremium access. (November 20, 1984, Order, pp. 41-44.) The Commission concluded that "facilities-based carriers will pay discounted access charges for Feature Group A ('FG-A') and Feature Group B

('FG-B') access, and that such charges will mirror the discount authorized by the FCC for interstate access rates." (November 20, 1984, Order, p. 41.)

On March 3, 1987, the Commission issued an Order clarifying its January 22 Order. The clarification states,

The intent of the Commission's Order of January 22, 1987, was that the discount apply to both feature group "A" access service and feature group "B" access service, as both are forms of non-premium access service. Moreover, contrary to AT&T assertions, the record in this case is replete with evidence to support application of the discount to both feature group "A" access service and feature group "B" access service, including remarks by its own witnesses on cross-examination. (March 3 Order, pp. 2-3.)

On May 7, 1987, the Commission issued an Order in response to SCB's letter of March 2, 1987. The Order reiterated that "the Commission's intention was to apply a discount to the ULAS inter-LATA channels in the same proportion as nonpremium switched access occurs." (May 7 Order, p. 3.)

KRS 278.270 states that the Commission shall "by order prescribe a just and reasonable rate to be followed in the future." After adequate proceedings and based on the evidence of record, on January 22, 1987, the Commission prescribed a discount for ULAS payments for nonpremium access. The discounted rate became the approved just and reasonable rate and should be effective as of that date.

Peach v. 21 Brands Distillery, 580 S.W.2d 235, 236 (Ky.App., 1979) states that a law is retroactive when it "creates or imposes a new duty in respect to transactions or considerations already past." Here, the Commission has imposed new duties and created

new rights through its quasi-legislative function of rate determination. The new duties and rights relative to the nonpremium access discount for ULAS payments were imposed on January 22 and should be effective from that day forward.

Therefore, all carriers should file revised data, beginning with third quarter 1986, reflecting premium and nonpremium intrastate switched access minutes. The information should be filed in a format directed by SCB, in its capacity as pool administrator. SCB shall compute revised ULAS bills to reflect the January 22 effective date. Bills for January will be prorated by dividing the January revenue requirement into two components. The first component will be 21/31 of the revenue requirement and will be used to compute revenue per nondiscounted channel. The second component will be 10/31 of the revenue requirement and will be used to compute revenue per discounted channel. This procedure essentially results in two separate bills for January. All subsequent bills will reflect the nonpremium discount.

IT IS THEREFORE ORDERED that:

1. MCI's motion to amend the proposed effective date for the ULAS discount on nonpremium access be and it hereby is granted.

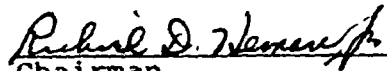
2. The 55 percent discount to ULAS payments for nonpremium access shall be effective January 22, 1987.

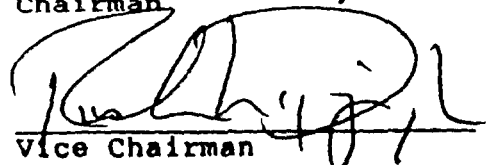
3. The interexchange carriers shall file revised data in a format directed by SCB in its capacity as pool administrator, beginning with third quarter 1986, which reflects premium and nonpremium intrastate switched access minutes.

4. SCB shall refile the portion of the ULAS tariff in question with an effective date of January 22, 1987, within 10 days of the date of this Order.

Done at Frankfort, Kentucky, this 4th day of September, 1987.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director